

Arizona (Terr.)
Laws, statutes
etc.

EXTRADITION RULES IN FORCE IN ARIZONA

EXECUTIVE DEPARTMENT
TERRITORY OF ARIZONA
OFFICE OF THE GOVERNOR

PHOENIX, ARIZONA, July 15, 1905
Clerk of the District Court,
Pima County,
Tucson, Arizona.

Dear Sir:

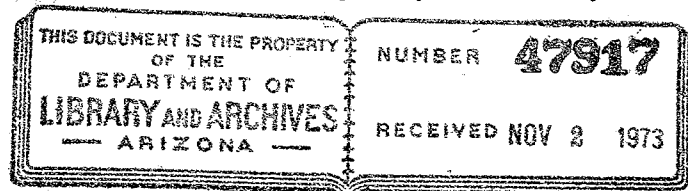
I am directed by the Governor to send to you, for your information, the following rules respecting applications for requisitions for the extradition of fugitives from justice. These rules are practically those agreed upon by the Governors of many of the States, and adopted for the sake of uniformity by others. For this reason they have been adopted by Governor Kibbey for use in this Territory. All applications for requisitions must conform to these rules, and you are kindly requested to preserve them in your files.

Very respectfully,

Samuel E. [Signature]
Private Secretary to the Governor.

EXPENSES

All expenses incident to the requisition and extradition shall be borne by the county whence the application comes, unless for good reasons shown such expenses or any part of them shall be directed by the Governor to be paid by the Territory.



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GENERAL REQUIREMENTS

The application for the requisition must be made by the District Attorney of the county in which the offense was committed, in all cases except as specified in Rule 8.

The application, and all accompanying papers, must be in duplicate, either of the original papers or certified copies thereof.

It is not required that the application of the District Attorney shall be sworn to, but all accompanying documents must be subscribed before a magistrate or clerk of the District Court.

WHAT THE DISTRICT ATTORNEY'S APPLICATION MUST SET FORTH

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled, for example: JOHN DOE.

(b) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(c) That in his opinion the ends of public justice require that the alleged criminal be brought to this Territory for trial at the public expense.

(d) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(e) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(f) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(g) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(h) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(i) If the offense charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

THE DOCUMENTS WHICH MUST ACCOMPANY THE APPLICATION

1. In all cases of fraud, false pretenses, embezzlement or forgery, when made a crime by the statute, the affidavit of the principal complaining witness or informant, that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required.

2. Proof by affidavit, of facts and circumstances satisfying the Executive that the alleged criminal has fled from this Territory, and is in the State on whose Executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the Territory of Arizona at the time of the commission of the alleged crime, and is found in the State upon which the requisition is made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies in duplicate must accompany the application.

4. If an indictment has not been found by a grand jury, true copies of the complaint shall be filed, and the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, and that a warrant has been issued; must be shown by affidavits taken before a magistrate (a Notary Public is not a magistrate within the meaning of the statutes).

5. Duplicate certified copies of the warrant, together with the returns thereto, if any, must be furnished.

6. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrant must be duly certified.

7. Upon the renewal of an application, for example: On the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new or

certified copies of the papers in conformity with the above rules, must be furnished.

8. In the case of any person who has been convicted of any crime and escaped after conviction, or while serving his sentence, the application may be made by the superintendent of the territorial prison, the jailer, sheriff or other officer that had him in custody, and shall be accompanied by certified copies of the indictment or complaint, record of conviction and sentence, upon which the person is held, with the affidavit of such person, from whose custody he escaped, showing such escape and the circumstances attending the same.

RULES RESPECTING APPLICATIONS FOR EXTRADITION FROM FOREIGN COUNTRIES

In every application to the Governor for a requisition upon the Government of the United States for the extradition from foreign countries the papers must be prepared in triplicate, duly certified, and in addition to compliance with the preceding rules respecting interstate extradition must conform to the following requirements:

1. The application should only be made where the United States has an extradition treaty with the foreign government wherein the fugitive has taken refuge, and only for an offense specified in the treaty.

2. In every application for a requisition it must be clearly made to appear that one of the offenses enumerated in the extradition treaty between the United States and the government from which extradition is sought has been committed within the jurisdiction of this Territory, and that the person charged therewith has sought an asylum or has been found within the dominions of such foreign government.

3. The extradition treaties of the United States ordinarily provide that the surrender of a fugitive shall only be granted upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her commitment for trial if the crime or offense had been there committed, hence it is desirable that as strong a case as possible should be made out in order to meet the contingencies of the local requirements of the place of arrest. Especial care should be taken in the preparation of appli-

cations for extradition from Mexico that compliance is had with the rules hereto appended.

4. If the person whose extradition is desired has been convicted of a crime or offense and escaped thereafter, the application should be accompanied by duly certified copies of the indictment or complaint, the record of conviction, and the sentence of the court, and proof by affidavit of the escape and his flight to the foreign country from which extradition is sought.

5. If the fugitive has not been convicted, but is merely charged with a crime, there must be a duly authenticated copy of the indictment or complaint, and of the warrant of arrest and return thereto, accompanied by a copy of the evidence upon which the indictment was found, or complaint filed, or warrant of arrest issued, or in lieu of such evidence by original depositions taken before a magistrate (not Notary Public) setting forth as fully as possible the circumstances of the crime. A copy of the sections of the law under which the defendant is prosecuted should be set forth in the application of the District Attorney.

6. If the extradition of the fugitive is sought for several offenses, copies of the several convictions, indictments, or complaints, and of the documents in support of each, should be furnished.

7. An application for requisition for the extradition of a fugitive from justice should state his full name, if known, and his alias, if any, the offense or offenses in the language of the treaty upon which his extradition is desired, and the full name of the person proposed for designation by the Governor as agent to receive and convey the prisoner to the United States, which designated person should be shown to be a suitable person having no private interest in the arrest or extradition of the fugitive.

8. Copies of all papers going to make up the evidence, transmitted as herein required, including the indictment, complaint, warrant of arrest, record of conviction, and sentence, must be duly certified by the clerk of the District Court, and the official character of the officers and of their authority should be duly certified by the clerk of the District Court. For example, if a complaint or deposition is made before a Justice of the Peace, the official character of the justice and his authority to administer oaths should be duly certified by the clerk under seal. It is advisable that the papers be exemplified instead of attaching the clerk's certificate alone. If there is but one au-

thentication, it should plainly cover all the papers attached.

9. By the practice of some of the countries with which the United States has treaties, in order to entitle copies of depositions to be received in evidence, the party producing them is required to declare under oath that they are true copies of the original depositions. It is desirable, therefore, that an affidavit be made by the District Attorney or person designated as agent declaring such depositions to be true copies of the original depositions, based upon the fact of a comparison of the copies with the originals or from having been present at the attestation of the copies. When the original depositions are forwarded, such declaration is not required.

10. Interlineations and erasures should be as far as possible avoided, and, where unavoidable, they should be shown to have been made before signature and certification.

11. In view of the technical requirements of Mexican law the rules prescribed in the following memoranda are essential and must be followed in order to justify the Governor in granting a requisition either upon the Government of the United States or upon the proper Mexican authorities of the frontier States:

MEMORANDA RESPECTING EXTRADITION FROM MEXICO

I. Every requisition for extradition under the provisions of the treaty between the United States of American and Mexico, shall be accompanied either by a copy of the sentence of the court in which the extraditable person was convicted, or by papers proving the alleged crime or offense. Proof that the crime has been committed, and proof of the guilt of the accused, must be furnished in the form of separate affidavits from at least two witnesses, when possible. The Mexican authorities are particularly insistent upon this point. They require that the evidence furnished should be sufficient to establish, *prima facie*, the guilt of the accused; and in general it may be said that the evidence required is such as would be admissible in the District Courts of Arizona, and sufficient to establish, without rebutting evidence, the guilt of the prisoner. In nearly all cases in which extradition has been refused by the Mexican government the presentation of the case has been weak in the particulars here mentioned. The identification of the fugitive has been incomplete, or the proof of guilt has been of a hearsay or otherwise inadmissible character.

2. The requisition shall, in all cases, be also accompanied by a full and accurate description of the accused, in order to establish his identity with the person whose extradition is demanded.

3. The corpus delicti of homicide in cases of a person not yet sentenced must be established by ocular inspection of the corpse and by medical testimony. If scientific evidence cannot be had, upon their impracticability being set forth, the testimony of reliable persons (experts to be preferred) or other proper evidence may be produced.

4. The general rule shall always be that, in order to prove the existence of the corpus delicti, which is a requisite for the arrest and commitment for trial of a person charged with the crime of homicide, the best evidence the nature of the case admits of shall be presented, if possible to be had; but if not possible, then the best that can be had may be allowed.

5. The testimony of witnesses under fourteen years, or of other disqualified persons, will not be admitted, unless the circumstances of the case show that better evidence cannot be had.

6. Each witness must explain satisfactorily the manner in which the facts asserted by him or her came to his or her knowledge.

7. The provision contained in the third paragraph of Article VIII of the treaty for the addition of an "authenticated copy of the law of the demanding country defining the crime or offense" shall be observed when the extradition is demanded for a crime or offense under the numbers 19 or 21 of the schedule of Article II.

8. It is almost invariably the rule when a fugitive of the Mexican race flees from Arizona to Mexico, that he claims the benefit of Mexican citizenship. Thereupon, as is quite proper, the Mexican authorities insist that all of the provisions of the extradition treaty be strictly complied with before the fugitive is surrendered. When it is known that the fugitive is a citizen of Arizona, proof of that fact must be furnished in unimpeachable form.

7

DEPARTMENT OF
LIBRARY AND ARCHIVES
ARIZONA

ARTICLES OF THE TREATY WITH MEXICO OF FEBRUARY
22, 1899, REFERRED TO OR EMBRACED IN
ABOVE MEMORANDA

ARTICLE II.

Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of, any of the following crimes or offenses:

1. Murder, comprehending the crimes known as parricide, assassination, poisoning, and infanticide.
2. Rape.
3. Bigamy.
4. Arson.
5. Crimes committed at sea:
 - (a) Piracy, as commonly known and defined by the laws of nations.
 - (b) Destruction or loss of a vessel, caused intentionally; or conspiracy and attempt to bring about such destruction or loss, when committed by any person or persons on board of said vessel on the high seas.
 - (c) Mutiny or conspiracy by two or more members of the crew, or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud, or by violence, taking possession of such vessel.
6. Burglary, defined to be the act of breaking and entering into the house of another in the night time, with intent to commit a felony therein.
7. The act of breaking into and entering public offices, or the offices of banks, banking houses, savings banks, trust companies, or insurance companies, with intent to commit theft therein, and also the thefts resulting from such acts.
8. Robbery, defined to be the felonious and forcible taking from the person of another of goods or money, by violence or by putting the person in fear.
9. Forgery or the utterance of forged papers.
10. The forgery or falsification of the official acts of the Government or public authority, including courts of justice, or the utterance or fraudulent use of any of the same.

11. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, bank notes, or other instruments of public credit; of counterfeit seals, stamps, dies, and marks of state or public administration, and the utterance, circulation, or fraudulent use of any of the above mentioned objects.
12. The introduction of instruments for the fabrication of counterfeit coin or bank notes or other paper current as money.
13. Embezzlement or criminal malversation of public funds committed within the jurisdiction of either party by public officers or depositaries.
14. Embezzlement of funds of a bank of deposit or savings bank or trust company chartered under Federal or State laws.
15. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.
16. Kidnaping of minors or adults, defined to be the abduction or detention of a person or persons in order to exact money from them or from their families, or for any other unlawful end.
17. Mayhem and any other willful mutilation causing disability or death.
18. The malicious and unlawful destruction or attempted destruction of railways, trains, bridges, vehicles, vessels, and other means of travel, or of public edifices and private dwellings, when the act committed shall endanger human life.
19. Obtaining by threats of injury, or by false devices, money, valuables or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when such crimes or offenses are punishable by imprisonment or other corporal punishment by the laws of both countries.
20. Larceny, defined to be the theft of effects, personal property, horses, cattle, or livestock, or money, of the value of twenty-five dollars or more, or receiving stolen property, of that value, knowing it to be stolen.
21. Extradition shall also be granted for the attempt to commit any of the crimes and offenses above enumerated, when such attempt is punishable as a felony by the laws of both contracting parties.

ARTICLE III.

Extradition shall not take place in any of the following cases:

1. When the evidence of criminality presented by the demanding party would not justify, according to the laws of the place where the fugitive or person so charged shall be found, his or her apprehension and commitment for trial, if the crime or offense had been there committed.
2. When the crime or offense charged shall be of a purely political character.
3. When the legal proceedings or the enforcement of the penalty for the act committed by the person demanded has become barred by limitation according to the laws of the country to which the requisition is addressed.
4. When the extradition is demanded on account of a crime or offense for which the person demanded is undergoing or has undergone punishment in the country from which the extradition is demanded, or in case he or she shall have been prosecuted therein on the same charge and acquitted thereof; provided that, with the exception of the offenses included in Clause 13, Article II, of this convention, each contracting party agrees not to assume jurisdiction in the punishment of crimes committed exclusively within the territory of the other.

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ARTICLE VII.

A person who has been surrendered on account of one of the crimes or offenses mentioned in Article II shall in no case be prosecuted and punished in the country in which his or her extradition has been granted, on account of a political crime or offense committed by him or her previous to his or her extradition, or on account of an act connected with such a political crime or offense, unless he or she has been at liberty to leave the country for one month after having been tried, and, in case of condemnation, for one month after having suffered his or her punishment, or having been pardoned.

An attempt against the life of the head of the government shall not be considered a political offense.

ARTICLE VIII.

Requisitions for the surrender of fugitives from justice, un-

der the present convention, shall be made by the respective diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or from its seat of government, they may be made by superior consular officers.

If a person whose extradition is asked for shall have been convicted of a crime or offense, a copy of the sentence of the court in which he was convicted, authenticated under its seal, with attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the respective contracting party, shall accompany the requisition.

When, however, the fugitives shall have been merely charged with a crime or offense, a similarly authenticated and attested copy of the warrant for his arrest in the country where the crime or offense is charged to have been committed, and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid.

Whenever, in the schedule of crimes and offenses of Article II, it is provided that surrender shall depend on the fact of the crime or offense charged being punishable by imprisonment or other corporal punishment according to the laws of both contracting parties, the party making the demand for extradition shall furnish, in addition to the documents above stipulated, an authenticated copy of the law of the demanding country defining the crime or offense, and prescribing a penalty therefor.

The formalities being fulfilled, the proper Executive authority of the United States of America, or of the United Mexican States, as the case may be, shall then cause the apprehension of the fugitive, in order that he or she may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the terms of this convention, the fugitive may be given up according to the forms of law prescribed in such cases.